Voter Mobilization in Judicial Retention Elections: Performance Evaluations and Organized Opposition*

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Although more states are adopting judicial performance evaluation programs, little is yet known about their impact. Across three elections in one urban district in Utah, there is little evidence that judges need worry that performance evaluations will lead to the loss of their seats, even if they score lower than colleagues. An organized opposition campaign had much more impact on a judge's retention vote. Interest group and procedural justice theories together help explain when opposition campaigns against trial judges arose in this community. Performance evaluation data may reinforce opposition campaigns based on procedural justice concerns.

Formal evaluation of judicial performance began in the mid-1970s and has since spread to at least twenty-five states plus the District of Columbia and Puerto Rico (Kearney, 1999; Rottman, 1998). Such programs are generally intended to provide information to the judges for self-improvement, but many provide information to voters or other appointing authorities. This is especially important in states with retention elections, where there is never a challenger to raise questions about the incumbent.

Presumably, the logic of retention elections is that all judges who perform satisfactorily should be retained, but that judges whose performance falls beneath a certain level should be ousted. This article addresses whether judicial performance evaluations change that logic. Do judges need to fear that slight differences between them and their colleagues will result in losing their jobs? Will voters "grade on a curve" and "fail" the lowest-ranked judges, regardless of the absolute quality level of their performance? How do performance evaluations interact with organized opposition campaigns? Do weak performance evaluations increase the likelihood of organized opposition, or can strong evaluations counteract such opposition campaigns?

After a brief introduction to judicial performance evaluation and its relation to voter mobilization, this article will compare interest group theory and procedural justice theory as explanations of organized opposition in trial judge elections. A study of three successive trial court elections, in 1996, 1998, and 2000, in Utah presents an opportunity to

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assess the relative influence of performance evaluations and organized opposition on retention election voting. In short, the case study suggests that performance evaluation scores have a slight influence on retention voting, but that judges do not have to worry that small differences will lead to dramatically different retention results. An organized opposition campaign in 1996 apparently had more effect on voters than below-average performance evaluation scores did in any year. Interest group and procedural justice theories combined best explain the circumstances in which an organized opposition campaign is most likely to arise. The study is based upon election data, newspaper articles, public documents, and interviews with eleven individuals in 1997, 1998, and 2001, including activists in an organized challenge to a judge, court staff members, attorneys, and media representatives.

Judicial Performance Evaluations Across the Nation

The rise of judicial performance evaluations is perhaps best seen in the context of increasing expectations for accountability of public officials (Kearney, 1999; Brennan et al., 1986; Mathias, 1990; Keilitz and McBride, 1992). Judicial performance evaluation systems most commonly involve gathering information through surveys or interviews from attorneys who have appeared before the judges, but may also include gathering information from others who come in contact with the judges, such as jurors, probation officers, or court observers. What is done with the information, however, depends on the purposes of the program. In approximately half the states, only the judges and perhaps judicial administrators receive the results of the evaluations, which are then used purely for self-improvement, such as in the design of judicial education programs and the like. In the other half, information is also shared with the voting public or other reappointing authorities (Rottman, 1998; Kearney, 1999).

Publicly disseminated judicial performance evaluations are one response to the perennial problem of voters' lack of information in judicial elections (Hall and Aspin, 1987; Klots, 1955; Johnson, Shaefer, and McKnight, 1978; Adamany and Dubois, 1976; McKnight, Shaefer, and Johnson, 1978; Griffin and Horan, 1979; Sheldon and Lovrich, 1980; Lovrich and Sheldon, 1983; Baum, 1995). Because information is often especially scarce in judicial retention elections, four states using retention elections (Alaska, Arizona, Colorado, and Utah) were relatively early adopters of judicial performance evaluation (Esterling and Sampson, 1998; Esterling, 1999). By 2001 New Mexico and Tennessee had joined this group (Kearney, 1999; Brody, 2000).

Only one of these states, Alaska, has had judicial performance evaluation long enough, since 1976, to do a rigorous statistical analysis of its effect on retention voting. Esterling and Sampson (1998:71) find a positive correlation between the percent affirmative vote that judges receive and their performance ratings on surveys of attorneys and of police and probation officers. The correlation is stronger with the attorney survey (.48) than with the other survey (.35). The Alaska Judicial Council defines a rating of 3 as acceptable, and "voters seem to respond to the evaluation ratings below 3 more than they do to ratings above 3" (Esterling and Sampson, 1998:72). Two judges with scores

below 3 received affirmative votes below the threshold of 50 percent between 1976 and 1996, but five others with equally low or lower scores retained their seats. Clearly, performance evaluation scores are not the only influence on an election, even in a state with a well-established program like Alaska's.

Observers disagree about the ultimate significance of this apparent influence of performance evaluations. To their critics, public performance evaluation programs threaten precious judicial independence (Griffin, 1995; Special Committee on Judicial Evaluations, 2000). In contrast, others such as Traciel Reid (1999:77) look to such programs to protect independence by providing information that could depoliticize retention elections and counter negative campaigns by "special interest groups." The present study neither takes a side on this debate nor answers whether performance evaluations are powerful enough to counter attacks on judges by special interest groups, but examines the relationship between performance evaluation and opposition campaigns more broadly.

Theories of Opposition Campaigns in Judicial Elections

Reid's hope for performance evaluations invokes the most common theory of opposition campaigns in retention elections, which is that they are sponsored by interest groups concerned about judges' substantive decisions. This theory is rooted in the broader pluralist theory of politics, which views groups organized around policy positions as pervasive in American politics, pursuing their policy goals across the legislative, executive, and judicial branches (McFarland, 1987). High-profile examples from California, Florida, Tennessee, and Nebraska of opposition campaigns against judges based on their decisions in cases dealing with criminal justice (especially capital punishment), abortion, and term limits buttress this theory (Culver and Wold, 1986; Reid, 1999 and 2000; Handberg, 1997:133). Economic interests may also be at play in retention opposition campaigns, but operate at times in the shadows of the more politically visible social issues (Wold and Culver, 1987:350).

Procedural justice theory, developed in social psychology, offers an alternative view of what people care about in the judicial system. Research in a variety of decision-making contexts, including courts, has demonstrated that individuals tend to be at least as concerned that decisions affecting them are made through fair procedures as with the outcomes. Fair procedures include characteristics such as efforts to be fair, honesty, consistency with ethical standards, opportunity to be heard, and opportunity to appeal (Tyler, 1988:121-22).

The high-profile interest group challenges that have understandably concerned judges have occurred against state supreme court justices. While interest group theory may usually account for opposition campaigns against appellate judges, procedural justice theory is especially pertinent to trial court judges. Because trial judges usually have the direct parties in their courtrooms, not only observing but also frequently testifying and interacting with attorneys and the judge, the parties would have a much stronger sense of whether a trial was fair than they would for an appellate procedure. In contrast, parties are less likely to judge the fairness of appellate proceedings because they seem

to be more arcane disputes over law rather than disputes over emotionally charged facts and often take place without the immediately affected parties present at all.[1]

Appellate judges' decisions also have a wider impact and thus are more likely to be significant in the eyes of interest groups, who are more concerned about policy issues than personal issues. Interest group theory alone may on occasion explain organized challenges to trial judges, but there are several reasons why trial judges are less likely than appellate judges to be evaluated for their decisions on the merits. First, their decisions are much more likely to affect only the immediate parties and not broader public interests. Second, in some trials a jury buffers the judge's responsibility for the outcome. Furthermore, procedural justice theory posits that even some who lose on the merits are able to assess whether procedures were fair. Losing parties often do not even appeal their cases, much less oppose a judge's retention.

Nevertheless, there is also a problem with procedural justice alone as an explanation for an opposition campaign against a trial judge. It is difficult for individual litigants who may have experienced poor treatment in a courtroom to find each other and organize collective action. Those individuals who are most familiar with a judge's conduct toward litigants generally, such as court employees or attorneys who regularly appear before them, are unlikely to help isolated litigants organize because they have strong disincentives to criticize a sitting judge publicly (Mullinax, 1973-74). Judges are almost always retained and, therefore, will continue to be an employee's supervisor and may well hear further cases involving the attorneys and their clients.

This suggests another role for interest groups, which by definition are organized to inform and mobilize citizens about issues of common concern: to facilitate communication among otherwise isolated litigants whose concerns fall into the purview of the group. Putting together the interest group and procedural justice theories suggests that trial judges may be at a particularly high risk of challenge if individual litigants feel they have not received appropriate procedural justice in the courtroom and attract the attention of interest groups that can mobilize an organized campaign against a judge.

Do formal judicial performance evaluation programs then have any relation to organized campaigns in judicial retention elections? At least one relationship seems theoretically clear: performance evaluations are more likely to buttress procedural justice reasons than interest group reasons for opposing judges. One of the main reasons for performance evaluations is to direct voters' attention to aspects of judging other than case outcomes. Performance evaluations do not collect and distribute information about judges' patterns of substantive decisions. Instead, they evaluate judges on qualities such as integrity, impartiality, preparation, attentiveness, demeanor, punctuality, and judicial temperament, which are potentially relevant to judgments about procedural justice, as well as on communication and administrative skills and knowledge of the law (Esterling and Sampson, 1998:27; Brody, 2000).

The case study looks at several trial judges with relatively low performance evaluation scores compared to their peers. All of these judges retained their seats, and their

[1] Perhaps this difference in direct experience helps explain Hall and Aspin's finding (1992:807) of more variation in the size of the affirmative vote for trial than appellate judges on the same ballot.

retention margins were not very proportional to their evaluation scores. The judge who came closest to losing his seat was the one who was subject to an organized challenge. The convergence of procedural justice and interest group theories helps explain the presence and absence of challenges to these lower-scoring judges.

Judicial Performance Evaluation in Utah

In the context of a major revision of the judicial article of its constitution, the state of Utah changed its judicial selection and retention system in 1985 from nonpartisan contested elections to merit selection and retention elections for all judges on courts of record. These judges stand for retention in the first general election after they have served three years and then every six years thereafter, except for supreme court justices, who stand every ten years. Shortly after adopting merit selection, the legislature mandated the state judicial council, the policymaking body of the judiciary, to certify that judges are qualified to stand for retention (Utah Code Ann. § 78-3-21 (4) 1998).[2] Formal performance evaluation began for the 1988 election, but its form and distribution have changed somewhat over the years.

The certification process has included a number of measures from the outset, such as declarations of good health, completion of judicial education requirements, and lack of disciplinary sanctions, but the most visible and arguably most influential part of the process is a survey of attorneys who have appeared before the judges. Because the evaluation is intended for judges' self-improvement as much as for the certification process, initially all judges were subject to the attorney poll every two years even when they were not standing for retention. Since 1997, to reduce the survey costs and the burden on responding attorneys, judges have been excluded in the first cycle after they have won retention. The results are released to the public only for those judges on the ballot in the present year.

An independent survey firm conducts the poll under contract with the courts and ensures the attorneys' anonymity. The attorney survey assesses the judges' performance on several criteria, which are spelled out in Rules of Judicial Administration 3-110 and 3-111: integrity (including impartiality and avoidance of impropriety); knowledge and understanding of the law; ability to communicate; preparation, attentiveness, dignity and control over proceedings; skills as a manager; and punctuality. A summary question asks if the attorney would recommend that the judicial council certify the judge to stand for retention. The attorneys rate the judges as excellent, more than adequate, adequate, less than adequate, and inadequate. The first three responses are considered satisfactory.

In 1998 the judicial council added a survey of jurors to the process. Jurors complete the survey forms either immediately after the verdict is delivered to the judge or after reaching the verdict but before delivering it, while waiting for court to reassemble. The juror survey includes questions worded differently but covering the same performance criteria as the attorney survey, except for knowledge and understanding of the law. A

[2] A judge may file for retention election in the absence of such certification. The judicial council consists of 13 judges representing all levels in the court system and one representative from the state bar.

summary question asks if the respondent would be comfortable being tried before this judge. (The two questionnaires are appended at the end of the article.) For anonymity, jurors put comments directly for the judge into an envelope that is delivered later. Jurors put the survey forms into an envelope addressed to the survey consultant. The survey questions are scored the same way as the attorneys' questions.

Utah's process is unusual in specifying what constitutes satisfactory performance on the questions as a whole (Brody, 2000:341). A judge must receive a minimum score of 70 percent satisfactory on at least 75 percent of the questions on both the attorney and juror surveys (excluding the summary questions) to be certified. Jurors so far rate all judges very highly and differentiate little among them, so the juror survey will be discussed much less here than the attorney survey.

Since 1996 the judges' performance on all the criteria for certification, including how each judge performed on each question on the two surveys, has been reported in a voter information guide produced by the lieutenant governor's office shortly before the election.[3] The 1996 voter guide simply noted if each judge achieved the 70 percent satisfactory standard on each question, but as of 1998 the guide reports the judges' actual scores for each question. Law requires the voter guide to be distributed as a newspaper insert in every general circulation newspaper in the state shortly before the election. In addition, the guides are distributed at public libraries, county clerks' offices, and disability offices. Community groups may request pamphlets for distribution to their members.

Because of the change in the distribution method beginning in 1996, this article will concentrate on the 1996, 1998, and 2000 elections. Because no appellate judges received any evaluation score below 87 percent in these years and the theoretical interest is more on trial judges, the analysis is limited to general jurisdiction trial court judges ("district courts" in Utah). District judges stand for retention every six years, so judges should be included no more than once. The study focuses on judges in the Third District, which includes Salt Lake and two adjoining counties.[4] These counties are served by the state's broadcasting stations and two major daily newspapers, so voters' news sources are likely to be quite consistent.[5] By limiting the analysis to judges on the same ballot in the largest metropolitan area in the state, one eliminates effects on retention rates from different legal/political cultures in rural and urban areas.

Evaluation Scores and Votes

Table 1 displays the percent affirmative vote each judge received in the three elections and some information about their performance evaluation scores. The number of ques-

[3] Before this time the performance evaluation scores were published in paid newspaper advertisements.

[4] The Third District includes thirty-one judges, but only twenty-seven judges stood for retention in the six years. The number of judgeships in the district has grown somewhat during this period. The exact number standing for retention will depend on when vacancies arise and are filled relative to the timing of general elections.

[5] In the Third District the voter guide is distributed through the two major dailies and six small weekly papers in the three counties.

Table 1
Retention Election and Performance Evaluation Results

Judge	Year	Retention % Affirmative	# of Questions Below Satisfactory	% Attorneys Recommending Retention	# Attorneys Responding
A	1996	79	0	NA	NA
B	1996	79	0	NA	NA
C	1996	78	0	NA	NA
D	1996	78	0	NA	NA
E	1996	78	0	NA	NA
F	1996	78	0	NA	NA
G	1996	78	0	NA	NA
H	1996	78	0	NA	NA
I	1996	77	0	NA	NA
J	1996	66	3	NA	NA
K	1996	50.4	1	NA	NA
L	1998	80	0	96	108
M	1998	80	0	93	81
N	1998	79	0	93	95
O	1998	78	0	99	143
P	1998	78	0	84	90
Q	1998	78	0	81	95
R	1998	76	0	72	110
S	2000	79	0	98	59
T	2000	78	0	95	119
U	2000	78	0	95	66
V	2000	78	0	88	118
W	2000	77	0	96	121
X	2000	77	0	93	93
Y	2000	77	0	85	115
Z	2000	74	3	71	120
AA	2000	72	4	68	120
Mean of all judges		76.24		87.94	
Standard deviation		5.75		9.81	

tions on which each judge failed to achieve the judicial council's standard of 70 percent satisfactory is available for all three elections. For the 1998 and 2000 elections, the percentage of attorneys recommending retention for each judge is also displayed.[6]

Almost all the Third District judges received affirmative retention votes between 70 and 80 percent during the three elections. Scores for the summary performance evalua-

[6] The number of attorney respondents is generally proportional to whether the judge had served a full six-year term or was a newer appointee.

tion question, in the two years they are available, are generally higher and have a much larger standard deviation.[7]

A few Third District judges had performance evaluation scores noticeably lower than those of their colleagues. Scores below 75 percent satisfactory are discussed to encompass those slightly above as well as those below the level the judicial council deems satisfactory. In the 2000 election two judges stood out. On the summary question recommending retention on the attorney survey, Judge Zenger ("Z" in **Table 1**) received 71 percent positive and Judge Aaron ("AA" in **Table 1**) received 68 percent positive, in contrast to an average of 92.9 percent (standard deviation 4.3) for their seven district court colleagues.[8] Judge Zenger and Judge Aaron also scored below 70 percent on three additional questions each. Despite these relatively low scores, the differences in the retention results were much less than the differences in the evaluation scores. Judge Zenger received a positive vote of 74 percent and Judge Aaron 72 percent, while the remaining seven judges were all between 77 and 79 percent.

In 1998 another seven district court judges were on the Third District ballot. There was a somewhat wider range among their performance evaluation scores than in other years. On the summary question of whether attorneys would recommend their retention, four judges received positive responses above 90 percent and two judges received positive responses above 80 percent, for a mean of 91.0 percent and standard deviation of 6.4. One judge, Judge Reynolds ("R" in **Table 1**), received only 72 percent positive responses. Judge Reynolds also scored 72 percent on another question and 70 percent on two others. Although these scores are all satisfactory by the judicial council's standard, they were noticeably lower than other judges'. Again, the election results were much less spread. Judge Reynolds received a retention rate of 76 percent, and the six other judges were all between 78 and 80 percent.

Thus, in 1998 and 2000 the judges with significantly lower evaluation scores received a lower retention vote, but only slightly lower.[9] The 1996 election was considerably different. At this time the voter information pamphlet simply reported if the judges' scores reached the 70 percent mark the judicial council deemed satisfactory, rather than actual scores. Two of the eleven Third District judges fell below this benchmark on at least one question. Judge Jones ("J" in **Table 1**) received below 70 percent satisfactory responses on three questions. Judge Keene ("K" in **Table 1**) received less than 70 percent on one question. On the general question recommending retention, both judges received more than 70 percent.

In the election, the two judges with lower evaluation scores fared substantially worse with the voters than did those with better evaluations. Judge Jones received 66 percent positive votes, and Judge Keene barely retained his seat with 50.4 percent positive votes. Thus, the effect of the evaluation scores is far from direct because the judge with only one

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7 Return rates for the 2000 survey ranged from 66 percent to 88 percent and averaged 76 percent. These included some responses of "no opinion" and "insufficient experience to form an opinion" even though all respondents had appeared at least once before the judge in the previous two years.

8 Pseudonyms are used for all judges.

9 Precise results of a regression analysis of these two years are available from the author on request.

unsatisfactory score was retained by a much lower vote than the judge with three unsatisfactory scores. The format of the public data at that time, however, made unavailable information about possible facets of performance only at or slightly above the minimum threshold or about the degree of seriousness of problems below the threshold.

The Circumstances of the 1996 Opposition Campaign

Of all the twenty-seven judges running for retention in the Third District from 1996 through 2000, only one judge faced an organized challenge: Judge Keene in 1996. A few other judges had performance evaluation scores as low or lower than his, but the one question on which Judge Keene scored below the satisfactory level was "weighs all evidence fairly and impartially before rendering a decision." This may suggest reasons for the opposition.

Judge Keene had first become the focus of considerable publicity for two controversial decisions in the summer of 1994. One was a custody dispute in which he ruled that the mother was forbidden to move out of the county because he felt that the children would not receive an adequate religious upbringing if she moved out of state and remarried, as planned. The other was his sentencing of the killer of a gay man to a maximum of six years in prison following a plea to second-degree felony manslaughter.

The latter case provoked a claim of bias against homosexuals from the local gay and lesbian community and some national attention that reverberated in the media for about three weeks. Feminists within the homosexual community also joined activities concerning the custody ruling, the repercussions of which lasted much longer. These events created a story about Judge Keene that struck chords about religion, gender, sexual orientation, and abuse of power that are salient to many members of the public and are within the purview of organized interest groups.

The story began to emerge when, after several attempts, the mother in the custody case finally interested the Utah chapter of the American Civil Liberties Union (ACLU) in the ruling. The group filed an appellate brief, and the court of appeals eventually ruled that the judge had misconstrued the "religious compatibility" criterion permissible in custody decisions (*Larson v. Larson*, 255 Utah Adv. Rep. 61 (1994); 888 P.2d 719 (1994)).

The local chapter of the National Organization for Women (NOW) also became involved, organizing a public forum in which seven women told of personal experiences with what they viewed as mistreatment by Judge Keene. The women claimed to have been ignored, shouted at, called names, threatened, and denied the opportunity to testify or present witnesses. NOW also set up a hot line for similar stories, which received ten to twelve calls a day for a while after the public meeting, according to a NOW officer. A "gadfly" column in the local newspaper also reported receiving "numerous calls" about Judge Keene (Rolly and Wells, 1994). At the forum NOW pledged to work against the judge's retention.

These events were extensively covered in the local media and received some national media attention, as well. The *Salt Lake Tribune*, the larger of the two daily newspapers, ran a lengthy article, "Is Utah Judge Unjust or Just Doing His Job?" (Hunt and

McCann, 1994). *Redbook*, a women's magazine with a circulation of 3.3 million, prominently featured Judge Keene in an article, "More of America's Most Sexist Judges" (Weller, 1994).

Although these events occurred approximately two years or more before his retention election, the activists' efforts to monitor Judge Keene kept the story alive during this period, though with lower visibility. NOW attempted to organize a court watchers project, but by its own assessment had difficulty recruiting volunteers with enough flexibility to adapt to the unpredictable changes of courtroom schedules. One woman, whose own divorce-related decision by Judge Keene was eventually upheld on appeal, maintained an information and support network for individuals who reported difficulties with Judge Keene. While complaints from women in divorce and custody cases were the most numerous, this database came to include people who had appeared before the judge in abortion, personal injury, domestic violence, bankruptcy, and property cases, as well.

Several women also filed complaints against the judge with the judicial conduct commission. The public attention focused on the commission resulted in the legislature's significantly upgrading its budget and staff in 1995, reforms the press attributed to the controversy over Judge Keene (Funk, 1994). In an unrelated complaint against Judge Keene arising from a school suspension dispute, the press alleged that the judicial conduct commission had decided to seek a reprimand before the 1996 election but did not refer it to the supreme court, the point at which the case becomes public, until early 1997 (McCann, 1997; Rivera, 1999).

As the election approached in 1996, the *Tribune* published its own attorney survey, independent of the judicial council's, of all trial judges in the state—federal as well as state—and a study of appellate reversal rates of those standing for retention. The newspaper's survey rated the judges on a scale from 1 (poor) to 4 (excellent) on six characteristics: temperament, knowledge of the law, diligence, intellect, decision making, and impartiality. The paper noted that Judge Keene was the only "veteran" judge who had had fewer than 50 percent of his appealed cases affirmed by higher courts. The paper cited six cases to support its conclusion that Judge Keene has a "pattern of exceeding his authority and a failure to follow established law. Even after corrections ordered by appellate courts, [Keene] on occasion continued to err, forcing even more appeals" (Cilwick and McCann, 1996). Although the newspaper did not directly editorialize that Judge Keene should be ousted from office, it did run an editorial twelve days before the election emphasizing the importance of the elections and naming him and Judge Jones as having below-average records in its study (Editorial, 1996).

The NOW chapter, which during the previous two years had sustained interest in the issue mainly through its internal communications with members, launched a low-budget public education campaign. The group distributed some one thousand "Vote No" bumper stickers, organized a telephone tree among members and their friends, and held a public rally opposing the judge just two days before the election. One group leader estimated that NOW spent approximately $600 overall.

Supporters of the judge responded with a contrasting account of Judge Keene, invoking the theme of judicial independence. Canon 5(C) of the Utah Code of Judicial

Administration allows judges in retention elections to operate campaigns for office if they have "drawn active public opposition." The judge cannot directly solicit or accept campaign funds or support, but can establish a committee of responsible persons to do so. A large advertisement supporting Judge Keene's retention appeared in both daily newspapers in the week before the election, captioned with the counter-story "A Judge's Job Is Making Tough Decisions." The ad listed 107 persons supporting the judge's retention. According to press reports, the committee raised over $6,000, the majority of which came from three large local law firms (Parkinson, 1996).[10] These activities for and against Judge Keene immediately before the election helped bring the stories about him to the attention of voters.

In contrast to the visible role of attorneys in supporting Judge Keene, lawyers were almost invisible in the campaign against him. One male attorney, who granted a confidential interview, was highly critical of Judge Keene but confirmed that lawyers perceive that if they speak out against a judge, they will jeopardize the fate of any current and future clients they might have in cases assigned to that judge. Only one attorney, a woman who moved out of state less than a year after the election, spoke out publicly against Judge Keene. Laywomen opposing Judge Keene reported in interviews various reactions from their attorneys, indicating Judge Keene's reputation. Some attorneys reportedly made immediate plans to set a case up for appeal upon being assigned to Judge Keene or made comments like "oh, he's always like that with women." A few attorneys offered covert support to his opponents. The woman who was forbidden to move out of the county found a package of relevant legal cases on her doorstep before dawn one morning shortly after her case had appeared in the media.

The near defeat of Judge Keene appears to owe little to the performance evaluation process. The opposition campaign began long before the performance evaluations appeared, so the latter may have reinforced but surely did not stimulate the former. It is possible that the opposition campaign influenced the evaluations, but the performance surveys are given only to attorneys or jurors who had been in Judge Keene's courtroom, so any impression they had of him by reputation would be tested against personal observation.

The campaign against this judge illustrates the explanatory power of the procedural justice and interest group theories combined. Judge Keene's substandard score on "weighs evidence fairly and impartially before rendering a decision" is consistent with a challenge based on procedural justice concerns. His alleged violations of their sense of procedural justice deeply offended and angered some private litigants who were willing to go public with their complaints. These litigants attracted modest organizational support from interest groups that saw broader significance in their complaints. The organizational involvement helped attract media attention with the result that Judge Keene barely achieved retention.

[10] The advertisement supporting Judge Keene raised concerns about potential conflicts of interest that continued for some time (Parkinson, 1996). In 1998 the state bar proposed a rule to seal financial disclosure records so that judges could not learn who had contributed to their retention campaigns. The judicial council rejected the proposal on the grounds that the judges would probably learn informally and only the public would be kept in the dark (Maffly, 1998a, 1998b).

Side Effects of the 1996 Opposition Campaign

The procedural justice and interest group theories also help explain the absence of organized challenges. In the same year that Judge Keene stood for retention, Judge Jones scored below the satisfactory level on three questions on the performance evaluation. Although no opposition campaign arose against him, he received the second lowest retention rate of any judge in the three elections. It appears that an opposition campaign against one judge, like that against Judge Keene, may also draw attention to other judges on the ballot with vulnerabilities, despite Hall and Aspin's (1987:344) generalization that "defeated judges do not significantly reduce the affirmative vote for other judges running for retention on the same ballot."

The reason nobody organized opposition to Judge Jones, while they did against Judge Keene, arguably lies in the nature of Judge Jones's alleged shortcomings, which are in the general area of legal competence. The three questions on which Judge Jones fell below 70 percent on the 1996 performance evaluation were "applies the law to the facts of the case," "clearly explains the basis of oral decisions," and "writes decisions in a clear and coherent manner."

Neither the interest group nor the procedural justice theory would predict significant opposition to a judge with these shortcomings. Interest groups would be unlikely to take a great interest in this judge because these flaws do not affect any particular public policy issue. Nor are they as related to procedural justice as those measured by some of the other survey questions. While failure to explain decisions or other actions in court may frustrate some litigants, they may not experience it as an injustice because they may expect not to understand such things. Laypeople are even more unlikely to feel they can evaluate when a judge is interpreting law incorrectly or writing a decision poorly. In contrast, laypeople are likely to feel fully qualified to make judgments about how they were treated. Ordinary citizens feel they know when they have been treated rudely or not allowed to present their side of the story.

The individuals who are qualified to recognize judicial failings in the area of legal competence are, of course, lawyers. Because lawyers, as noted earlier, are reluctant to speak out against judges for any reason, judges are much more likely to be challenged for perceived failings that lay citizens believe they are capable of assessing. This generalization is consistent with the data, though not the conclusion, of Carbon and Berkson's study (1980:26-27) of judges defeated in retention elections. While the authors point out that lack of professional competence was the most common reason for opposition, in fact not a single one of the defeated judges was opposed solely for this reason. In every case in which professional competence was an issue, other perceived shortcomings were also present, such as judicial temperament, controversial decisions, or criminal activity. Other elections were challenged based on only one of the other possible grounds.

Despite the absence of a campaign against him, Judge Jones's retention vote of 66 percent was much lower than that of any other judge except Judge Keene in the three election years. This appears to be a spillover effect of the greater attention the 1996 judicial races received because of the *Tribune*'s assessment of all judges and the controversy about

Judge Keene. Readers of the *Tribune's* survey results would have learned that Judge Jones received the lowest scores for "knowledge of the law" (2.1) and "intellect" (2.1) of all ninety-eight state and federal judges in the poll. He also tied with one other judge, who was not on the 1996 ballot, for lowest scores for explaining procedures and writing decisions in a coherent manner (2.3). He also received among the lowest scores for judicial temperament (2.4) and diligence (2.6). The article also discussed three decisions by Judge Jones that were reversed on appeal (Cilwick and McCann, 1996). Judge Jones's relatively low scores were mentioned in at least four articles preceding the election.

Evidence that Judge Jones's low retention rate in 1996 was a function of these forces, instead of his official judicial performance evaluation scores alone, is that the vote he received in 1996 was significantly lower than his retention margin six years earlier, when he had also had unusually low scores. In 1990 Judge Jones fell below the 70 percent positive threshold on six questions (the worst of any judge on the ballot), including knowledge of rules of procedure and evidence, clarity of decisions, and preparation (Costanzo, 1990). Nevertheless, these negative evaluations in 1990 had little effect on his vote.[11] He received a positive vote of 73.7 percent, compared to an average retention vote for the rest of the Third District Court judges of 74.9 percent.

Thus, the lack of an opposition campaign to Judge Jones is consistent with the interest group and procedural justice theories, because his reported shortcomings were not of the types that would generate opposition. Nevertheless, he received a lower retention vote than he had previously, when his judicial performance evaluation scores were even worse than in 1996, probably because of greater attention drawn to the later race.

The Absence of Opposition Campaigns in 1998 and 2000

In 1998 and 2000 there were one and two Third District judges, respectively, whose performance evaluation scores stood out as noticeably lower than the scores of their peers. The procedural justice theory might have predicted opposition campaigns against these three judges because some of their lower scores implicate aspects of procedural justice. Specifically, on the same question on which Judge Keene scored "below 70 percent" in 1996, "weighs all evidence fairly and impartially before rendering a decision," Judge Zenger scored 67 percent in 2000 and Judge Reynolds scored 70 percent in 1998.

Moreover, Judge Reynolds scored just 70 percent on "behavior is free from bias" and 72 percent on "writes decisions in clear and coherent manner." On two questions asked for the first time in 2000, Judge Zenger scored 63 percent on "demonstrates appropriate demeanor" and 65 percent on "allows sufficient time to present case." Another judge, Judge Aaron, scored 65 percent on "behavior is free from impropriety and the appearance of impropriety," 61 percent on "behavior is free from bias and favoritism," and 56 percent on "demonstrates appropriate demeanor" in 2000. Except for the ques-

[11] At that time the performance evaluation scores were published only in paid newspaper advertisements, so they may have also had some less circulation or credibility than in 1996 and later, when they were published in the lieutenant governor's voter information pamphlet.

tion on decision writing, the lower scores on these questions raise potential procedural justice concerns.

In 1998 and 2000 the official performance evaluation scores were both reported more precisely and received more direct coverage than they had in 1996. According to its editor, the *Tribune* felt that its independent survey in 1996 had pressured the courts into publishing the judges' specific scores rather than merely if the judges had reached the level necessary for certification. Therefore, in 1998 and 2000 the paper continued its appellate reversal analysis but combined it with reporting the official performance evaluation results. These articles appeared within three weeks before the election and received much the same space and prominence the paper's own survey had received in 1996 (Hunt, 2000a; "Judging the Judges," 1998). The *Tribune* also noted the lower scores of Judge Reynolds in 1998 in an article on September 1 at the time the court released the year's performance evaluation data (McCann, 1998). Newspaper articles noted Judges Zenger's and Aaron's scores when the court released them in June 2000 (Khashan, 2000; Camporreales, 2000) and again in October in an article running the same day as the *Tribune*'s large summary of the performance evaluation results (Hunt, 2000b).

So why was there no opposition campaign against these three judges, despite roughly similar scores from Reynolds and lower scores overall from Zenger and Aaron in somewhat the same areas? There are several possible reasons. First, the aggregation of the data may mask substantial differences in performance. By combining ratings of excellent, more than adequate, and adequate as "satisfactory," one judge's satisfactory score could be significantly lower than another's. There is also no way to know if Judge Keene's "below 70 percent" was similar to or much lower than the other judges' scores.

Another difference appears in the judges' appellate reversal rates reported by the *Tribune*. Unlike Keene, none of the other three judges had noticeably higher reversal rates than their colleagues. This is an independent measure that Keene may indeed have failed sometimes to "[weigh] all evidence fairly and impartially before rendering a decision," and not just given the appearance of doing so. In particular, the court of appeals' reversal of his decision in the custody case that initially focused attention on him may have legitimized the criticisms.

Third, the performance evaluation survey is completed not by litigants, but by attorneys, who are disinclined to organize publicly against judges. It may well be that these three other judges are tough on and disliked by attorneys but do not treat litigants in the way Judge Keene reportedly did, which so angered and mobilized them.

On this point the juror surveys, which were introduced after Judge Keene's and Jones's evaluations, provide some relevant comparisons to the attorney surveys. For example, Judge Reynolds received 100 percent on all questions from the 16 jurors polled about him, so at least his behavior in the courtroom was not so egregious as to offend jurors. Jurors were slightly more critical of Judges Zenger and Aaron. Six percent (of 147 respondents) gave Judge Zenger less than favorable ratings on "does the judge avoid 'playing favorites.'" Twelve percent of juror respondents gave Judge Aaron a less than favorable rating on the same question, but there were only 8 respondents. Seven percent of Judge Zenger's respondents also questioned his patience, but Judge Aaron received 100 percent support on that and all other questions. Exactly what "playing favorites"

means is unclear, however, because both judges scored 99 or 100 percent on their behavior being "free from bias."

If certain individuals were occasionally "disfavored" by Judges Zenger and Aaron, those individuals may not have shared any particular characteristic. In contrast, Judge Keene was perceived as singling out women for his alleged lapses in temperament and fairness. This eventually provided his angry litigants with a common ideological understanding of their experience and with access to an interest group, the Salt Lake and Summit County chapters of the National Organization for Women, with experience in political organizing (Olson and Batjer, 1999). Political mobilization occurs more easily among individuals who are "already integrated into some form of common group activity or allegiance" than among isolated individuals (McCann, 1994:111).

The contrasting situation of Judge Aaron is instructive. Judge Aaron is the only woman among the lower-scoring judges in the three elections. She received the lowest score of any on the summary question recommending retention and the only score below 60 percent, which she received for "demonstrates appropriate demeanor." Judge Aaron has twice received private sanctions from the Judicial Conduct Commission for intemperate behavior, both times reportedly toward a journalist (Hunt, 2000b). Nevertheless, the *Tribune* editor does not see her as consistently singling out any group for negative treatment. Moreover, in contrast to Judge Keene, she is quite popular with women's groups and has won several awards from them.[12] Indeed, Judge Aaron has implied that attorneys may have given her lower performance evaluation scores than they would a male judge for the same conduct (Hunt, 2000b).

One way to describe Judge Keene's situation, then, is that he was the target of organized interest groups and the other judges were not. It is likely, however, that the line is not always bright between the good judge challenged by narrow interest groups and the bad judge challenged by informed and mobilized citizens. Appellate judges undoubtedly are more vulnerable to citizens who have not been in their courtrooms but who disagree with their decisions. Trial judges, by comparison, are more vulnerable to angry individual litigants. This is one of those relatively rare legal contexts where, in Marc Galanter's terminology (1974:99, n. 10), "one-shotters" (once their case is over) have an advantage over "repeat-players," because they can "do [their] damnedest without fear of reprisal next time around or on other issues." These litigants do, however, need to be sufficiently numerous and connected to one another be able to mount an opposition campaign.

Conclusion

This article has argued that formal judicial performance evaluations are unlikely on their own to lead voters to differentiate greatly among judges in retention elections. In Utah,

[12] According to the voter information pamphlet, the YWCA selected her as an Outstanding Woman of Achievement in 1998. She was selected for the Governor's Woman of Achievement Award in 1998. The Utah Business and Professional Women's Association selected her as Professional Woman of the Year in 1995. She was selected as Woman Lawyer of the Year in 1995.

the association between judges' evaluation scores and their subsequent positive vote for retention is weak. A small retention margin is more associated with the presence of an organized opposition campaign, which I have argued is most likely to occur on the trial bench if a judge offends the sense of procedural justice of litigants with access to resources for political organizing. Such resources may come from an interest group that perceives the litigants' experiences as within the scope of the group's concerns.

In principle, performance evaluations can buttress procedural justice reasons for either opposing or supporting a judge. This case study addresses only the relationship between relatively weak performance evaluation scores and opposition to retention. The more common concern of judges is about the ability of strong performance evaluation scores to protect a judge from a challenge based purely on interest group opposition to the policy implications of a judge's decisions.

Proponents of performance evaluations like to see them as an alternative to campaigns in retention elections. They could counter opposition campaigns based on policy disagreements (Reid, 1999:77) or render campaign efforts against truly poor judges unnecessary if voters would just use them. The Utah example suggests, however, that evaluations do not achieve this degree of impact. The purpose of campaigns is to mobilize voters by actively distributing information through many media and by intentionally creating persuasive images or stories appealing to voters, rather than merely describing the candidates' qualifications. If performance evaluation systems hope to match this impact, they must give great attention to both the nature of the evaluation presented and the distribution of the results.

Distribution is important because receiving information is a necessary but not sufficient condition for opposing a judge's retention for most voters. The exception is the persistent 20 to 30 percent of voters who regularly vote against all judges for retention. Scholars recognize these voters as reflecting levels of general trust in public officials and institutions more than individual judgments about candidates (Hall and Aspin, 1987; Aspin, 1999). For the majority, widespread distribution of the performance evaluation scores is essential if they are to effect either opposition to a poor judge or support for a good judge facing negative information from another source.

In their 1996 assessment of retention evaluation programs in Utah, Arizona, Colorado, and Alaska, Esterling and Sampson (1998:36-38) found higher awareness of the performance evaluation information among voters in its nonrandom samples in Utah and Alaska than in Arizona and Colorado and attributed the differences to distribution. At that time Arizona and Colorado distributed their information only at public buildings and, for the first time that year, via a Web site. In contrast, Alaska mailed its information to the household of each registered voter. While Utah's dissemination through newspaper inserts as well as at public buildings is more extensive than Arizona's and Colorado's distribution at the time, it is not as extensive as a mailing to households. Utah has also not yet distributed this information via the Internet.

In comparison, the opponents of Judge Keene used a much wider range of information dissemination, even though they spent very little money. They employed a telephone tree, distributed bumper stickers, and obtained free media coverage with a public

rally. The litigant in the controversial custody case even took her children trick-or-treating while wearing a sandwich board with a message opposing Judge Keene.

The persuasive quality of campaigns also differentiates them from Utah's performance evaluation information. This difference is theoretically linked to the distinction between narrative and statistical data. In contrast to the dominance in midcentury scholarship of the scientific model and quantifiable data, late twentieth-century scholarship in many areas has pointed out the power of stories or narratives as a style of communication and mode of transferring information. While statistics seem to offer greater objectivity than a compilation of individual stories (though this is contested by some), they are a passive form of information (Stone, 1997). Practicing lawyers have long known the power of well-told stories, and legal scholars are now documenting this impact (Brooks and Gewirtz, 1996). Even in an area as awash in statistical data as voting studies, Samuel Popkin has recognized the importance of the presentation of information: "data presented in an emotionally compelling way may be given greater consideration and more weight than data that is statistically more valid, but emotionally neutral" (Popkin,1994:16).

In the challenge to Judge Keene, his opponents told a dramatic story about him, which was much more memorable to voters than the statistical data of the performance evaluations. On the other hand, the raw numbers of the evaluation scores of Judges Reynolds, Zenger, and Aaron were insufficient to tell voters if they were such poor judges they should be opposed or if there were another, less-negative story that explained why their scores were lower than their colleagues'.

As more states adopt performance evaluations, there may be the opportunity for cross-state comparisons of the effect of different formats and distribution methods on retention results. If judicial performance evaluations consist largely of statistics that objectively describe the judges' qualifications and are less than pervasively distributed, however, their impact is likely to be limited in either supplanting the need for organized campaigns to oust inadequate judges or countering the influence of organized campaigns to oust judges for inappropriate reasons.

Across three elections in one urban district there is little evidence that judges need worry that performance evaluations as conducted in Utah will lead to the loss of their seats, even if they score lower than their colleagues. It is still likely to require an organized opposition campaign to attract enough attention to retention elections to threaten a judge's position. Performance evaluations do, however, tend to include substantial information bearing on the procedural justice received in a trial judge's courtroom. Such information has the potential to reinforce and legitimize litigants' complaints. Perhaps with appropriate presentation and distribution, positive information on such matters could also refocus and delegitimize inappropriate criticisms of judges, but this conclusion must await study in a context offering those factual circumstances. **jsj**

REFERENCES

ADAMANY, D., and P. DUBOIS (1976). "Electing State Judges," 3 *Wisconsin Law Review* 731.

ASPIN, L. (1999). "Trends in Judicial Retention Elections, 1964-1998," 83 *Judicature* 79.

BAUM, L. (1995). "Electing Judges," in L. Epstein (ed.), *Contemplating Courts.* Washington: Congressional Quarterly Press.

BRENNAN, N., F. BREMSON, A. HANDLER, and J. FRANZ (1986). "Judicial Performance Evaluation," 4 *Law and Inequality* 77.

BRODY, D. C. (2000). "Judicial Performance Evaluations by State Governments: Informing the Public While Avoiding the Pitfalls," 21 *Justice System Journal* 331.

BROOKS, P., and P. GEWIRTZ, eds. (1996). *Law's Stories: Narrative and Rhetoric in the Law.* New Haven: Yale University Press.

CAMPORREALES, H. (2000). "Two Judges Scores Low in a Survey of Lawyers," *Deseret News*, June 1, at B1.

CARBON, S., and L. BERKSON (1980). *Judicial Retention Elections in the United States.* Chicago: American Judicature Society.

CILWICK, T., and S. MCCANN (1996). "Utah Lawyers Have Dim View of a Pair of District Judges," *Salt Lake Tribune*, October 20, at A19.

COSTANZO, J. (1990). "35 Utah Jurists Receive Passing Grades," *Deseret News*, August 11, at A1.

CULVER, J. H., and J. T. WOLD (1986). "Rose Bird and the Politics of Judicial Accountability in California," 70 *Judicature* 81.

EDITORIAL (1996). "Voters, Judges on Trial," *Salt Lake Tribune*, October 23, at A8.

ESTERLING, K. (1999). "Judicial Accountability the Right Way: Official Performance Evaluations Help the Electorate as well as the Bench," 82 *Judicature* 206.

ESTERLING, K., and K. SAMPSON (1998). *Judicial Retention Evaluation Programs in Four States: A Report with Recommendations.* Chicago: American Judicature Society.

FUNK, M. (1994). "Utah Plans to Change the Way Judges Are Judged," *Deseret News*, December 4, at B1.

GALANTER, M. (1974). "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," 9 *Law and Society Review* 95.

GRIFFIN, J. (1995). "Judging the Judges," 21 *Litigation* 5.

GRIFFIN, K., and M. HORAN (1979). "Merit Retention Elections: What Influences the Voters," 63 *Judicature* 78.

HALL, W. K., and L. T. ASPIN (1992). "Distance from the Bench and Retention Voting Behavior: A Comparison of Trial Court and Appellate Court Retention Elections," 15 *Justice System Journal* 801.

—— (1987). "What Twenty Years of Judicial Retention Elections Have Told Us," 70 *Judicature* 340.

HANDBERG, R. (1997). "Judicial Accountability and Independence: Balancing Incompatibles?" 49 *University of Miami Law Review* 127.

HUNT, S. (2000a). "2000 Review of the Judges: Judicial Elections Offer Few Thrills But Get Job Done," *Salt Lake Tribune*, October 15, at A1.

—— (2000b). "Two Judges Up for Election Receive Critical Reviews; Lawyers Cite Poor Demeanor, Grasp of Facts, Laws," *Salt Lake Tribune*, October 15, at A8.

HUNT, S., and S. MCCANN (1994). "Is Utah Judge Unjust or Just Doing His Job?" *Salt Lake Tribune*, September 4, at A4.

JOHNSON, C., R. SHAEFER, and R. MCKNIGHT (1978). "The Salience of Judicial Candidates and Elections," 59 *Social Science Quarterly* 371.

"Judging the Judges" (1998). *Salt Lake Tribune*, October 25, at J1.

KHASHAN, N. (2000). "[Aaron], [Zenger] at Bottom of Retention-Ballot Ratings; 3rd District Judges on Bottom of Attorneys' List," *Salt Lake Tribune*, June 1, at B1.

KEARNEY, R. C. (1999). "Judicial Performance Evaluation in the States," 22 *Public Administration Quarterly* 468.

KEILITZ, S., and J. W. MCBRIDE (1992). "Judicial Performance Evaluation Comes of Age," 16:1 *State Court Journal* 4.

KLOTS, A. T. (1955). "The Selection of Judges and the Short Ballot," 38 *Journal of the American Judicature Society* 134.

LOVRICH, N., and C. SHELDON (1983). "Voters in Contested, Non-partisan Judicial Elections: A Responsible Electorate or a Problematic Public?" 36 *Western Political Quarterly* 241.

MAFFLY, B. (1998a). "Bar Proposal Would Prohibit Publishing Names of Lawyers Who Endorse Judges," *Salt Lake Tribune*, March 3, at B1.

—— (1998b). "Proposal That Would Seal Financial Disclosures on Judicial Retention Elections Is Turned Down," *Salt Lake Tribune*, April 28, at B2

MATHIAS, S. (1990). *Electing Justice: A Handbook of Judicial Election Reforms.* Chicago: American Judicature Society.

MCCANN, M. (1994). *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization.* Chicago: University of Chicago Press.

MCCANN, S. (1998). "Utah Lawyers Give Most Judges an 'A'; Just a Few Get Less than 90% Approval in Survey That Voters Will See this Fall," *Salt Lake Tribune*, September 1, at A1.

—— (1997). "Bad Judgment: Controversial [Keene] Deserves Reprimand for Phone Call, Commission Says," *Salt Lake Tribune*, February 1, at D1.

MCFARLAND, A. S. (1987). "Interest Groups and Theories of Power in America," 17 *British Journal of Political Science* 129.

MCKNIGHT, R. N., R. SHAEFER, and C. A. JOHNSON (1978). "Choosing Judges: Do the Voters Know What They're Doing?" 62 *Judicature* 94.

MULLINAX, O. (1973-74). "Judicial Revision: An Argument Against the Merit Plan for Judicial Selection and Tenure," 5 *Texas Tech Law Review* 32.

OLSON, S., and C. BATJER (1999). "Competing Narratives in a Judicial Retention Election: Feminism versus Judicial Independence," 33 *Law and Society Review* 123.

PARKINSON, C. (1996). "Attorneys Question Ad Listing Judge's Supporters," *Deseret News*, October 31, at B1.

POPKIN, S. (1994). *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns.* Chicago: University of Chicago Press.

REID, T. V. (2000). "The Politicization of Judicial Retention Elections: The Defeat of Justices Lanphier and White," in *Research on Judicial Selection, 1999.* Chicago: American Judicature Society.

—— (1999). "The Politicization of Retention Elections: Lessons from the Defeat of Justices Lanphier and White," 83 *Judicature* 68.

RIVERA, R. (1999). "High Court Reprimands Judge [Keene]," *Salt Lake Tribune*, August 28, at A1.

ROLLY, P., and J. WELLS (1994). "Rolly and Wells," *Salt Lake Tribune*, August 12, p. D1.

ROTTMAN, D. B. (1998). *State Court Organization.* Washington, DC: Bureau of Justice Statistics.

SHELDON, C. H., and N. P. LOVRICH, JR. (1983). "Knowledge and Judicial Voting: The Oregon and Washington Experience," 67 *Judicature* 234.

SPECIAL COMMITTEE ON JUDICIAL EVALUATIONS. (2000). "Report of Special Committee on Judicial Evaluations," *Hawaii Bar Journal,* February, at 6.

STONE, D. (1997). *Policy Paradox: The Art of Political Decision Making.* New York: Norton.

TYLER, T. R. (1988). "What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures," 22 *Law and Society Review* 103.

WELLER, S. (1994). "More of America's Most Sexist Judges," *Redbook*, December, at 88.

WOLD, J. T., and J. H. CULVER (1987). "The Defeat of the California Justices: The Campaign, the Election, and the Issue of Judicial Accountability," 70 *Judicature* 348.

APPENDIX 1

Attorney Survey

Utah Judicial Council Survey of Judicial Performance for _____.
Responses are due on or before _____.

[ ] My appearances before this justice or judge within the last two years have been insufficient to enable me to make an informed evaluation. (Without responding to the criteria, return the survey in the envelope provided or fax it to the survey consultant.)

Rate this justice or judge on the following criteria:	Excellent	More Than Adequate	Adequate	Less Than Adequate	Inadequate	No Personal Knowledge
1) Behavior is free from impropriety and the appearance of impropriety.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
2) Behavior is free from bias and favoritism.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
3) Avoids ex parte communications.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
4) Understands the rules of procedure and evidence.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
5) Understands the substantive law.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
6) Understands recent legal developments.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
7) Perceives legal and factual issues.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
8) Properly applies the law to the facts of the case.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
9) Is prepared for oral argument.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
10) Maintains the quality of questions and comments during oral argument.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
11) Demonstrates appropriate demeanor.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
12) Issues opinions without unnecessary delay.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
13) Opinions are well written.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
14) Opinions demonstrate scholarly legal analysis.	[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
	Yes	No				
15) Taking everything into account, do you recommend this justice or judge be certified for election?	[ ]	[ ]				

Add any comment you wish. Write clearly. These will be retyped by the survey consultant and sent anonymously and in confidence to the judge.

APPENDIX 2

Juror Survey

	Juror Questions	Yes	No	No Personal Knowledge
1.	Does the judge avoid "playing favorites?"	[ ]	[ ]	[ ]
2.	Does the judge clearly explain court procedures?	[ ]	[ ]	[ ]
3.	Does the judge clearly explain reasons for delay?	[ ]	[ ]	[ ]
4.	Does the judge clearly explain responsibilities of the jury?	[ ]	[ ]	[ ]
5.	Is the judge fair?	[ ]	[ ]	[ ]
6.	Is the judge dignified?	[ ]	[ ]	[ ]
7.	Is the judge courteous?	[ ]	[ ]	[ ]
8.	Is the judge arrogant?	[ ]	[ ]	[ ]
9.	Is the judge patient?	[ ]	[ ]	[ ]
10.	Is the judge attentive?	[ ]	[ ]	[ ]
11.	Is the judge respectful?	[ ]	[ ]	[ ]
12.	Does the judge convene court without delay?	[ ]	[ ]	[ ]
13.	Did you find the recesses to be frequent enough and long enough to attend to your personal needs?	[ ]	[ ]	[ ]
14.	Would you be comfortable having your case tried before this judge?	[ ]	[ ]	[ ]